

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3535

United States of America,

Appellee,

v.

Christopher A. Welker,

Appellant.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: April 11, 2005

Filed: May 16, 2005

Before COLLOTON, McMILLIAN, BENTON, Circuit Judges.

PER CURIAM.

After admitting to stealing seven firearms, Christopher Andrew Welker pleaded guilty to being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g)(1). The district court¹ enhanced Welker's sentence based on the Armed Career Criminal Act of 1984 (ACCA) of 18 U.S.C. § 924(e)(1). He appeals the enhancement, arguing that the district court violated *Blakely v. Washington*, 542 U.S. ---, 124 S.Ct. 2531

¹The Honorable Rodney W. Sippel, United States District Judge for the Eastern District of Missouri.

(2004) by "finding" that his three prior burglary convictions were violent felonies. This court reviews de novo whether a prior offense is a violent felony under section 924(e). *United States v. Abernathy*, 277 F.3d 1048, 1051 (8th Cir.), *cert. denied*, 535 U.S. 1089 (2002). Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

The ACCA mandates a minimum 15-year sentence for a violation of section 922(g)(1) when the person has three or more convictions for a "violent felony." 18 U.S.C. § 924(e)(1). A prior conviction is a sentencing factor for the court. *Almendarez-Torres v. United States*, 523 U.S. 224, 243-44 (1998). Whether a prior conviction is a violent felony is a question of law for the court, not an issue submitted to a jury. *United States v. Sanders*, 377 F.3d 845, 847 n.3 (8th Cir. 2004). Therefore, a court does not engage in prohibited fact-finding when enhancing sentences under the ACCA for prior convictions. *See United States v. Painter*, 400 F.3d 1111, 1111 (8th Cir. 2005).

This court has held repeatedly that a burglary conviction is a violent felony. *United States v. Nolan*, 397 F.3d 665, 666 (8th Cir. 2005); *United States v. Blahowski*, 324 F.3d 592, 594-95 (8th Cir.), *cert. denied*, 540 U.S. 934 (2003); *United States v. Hascall*, 76 F.3d 902, 904 (8th Cir. 1996). Moreover, section 924(e) includes burglary in the definition of violent felony. 18 U.S.C. § 924(e)(2)(B)(ii). Because Welker had three burglary convictions, the district court did not err in enhancing his sentence under the ACCA.

The judgment of the district court is affirmed.